

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Timothy McGuire and James Lee
Joseph Ryan,

Plaintiffs,

v.

Case No. 05-40185

Royal Oak Police Sgt. Douglas Warner,
et al.,

Honorable Sean F. Cox

Defendants.

ORDER REQUIRING BRIEFING

In this Court's August 3, 2009 Order, this Court concluded that, "under both federal and state law, Defendant Warner is entitled to absolute immunity *from civil liability* for his preliminary examination testimony." (8/3/09 Order at 5). Accordingly, prior to the beginning of trial, this Court ruled that it "shall preclude all evidence of, and any testimony or argument related to, Defendant Warner's testimony at the preliminary examination." (*Id.* at 6).

Notably, this Court did *not* rule as to whether Defendant Warner's preliminary examination testimony could be used for the limited purpose of impeachment, should his testimony at trial contradict his preliminary examination testimony. That issue was not raised, or analyzed, in the briefing submitted by the parties.

Now, during the course of this trial, Plaintiffs' Counsel seeks to use Defendant Warner's preliminary examination testimony for the limited purpose of impeaching his trial testimony. Plaintiffs submitted a brief on this issue on August 11, 2009.

IT IS ORDERED that, **no later than 1:00 p.m. on August 14, 2009**, Defendants shall file a brief of no more than 14 pages addressing the issue of whether testimony protected by the testimonial privilege can be used for the limited purpose of impeachment. Specifically, Defendant shall address whether: 1) absolute immunity bars the use of protected testimony for all purposes; or 2) the trial court has the discretion to admit testimony protected by the testimonial privilege for the limited purpose of impeachment. Defendants' brief should attach all authority it relies upon.

IT IS FURTHER ORDERED that, no later than **12:00 p.m. on August 15, 2009**, Plaintiffs may file a Reply Brief of no more than 8 pages addressing these same issues. Plaintiffs' Reply Brief should attach all authority it relies upon.

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: August 12, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 12, 2009, by electronic and/or ordinary mail.

S/Jennifer Hernandez

Case Manager